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ACCOUNTANTS

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION

AMERICAN INSTITUTE OF  
CERTIFIED PUBLIC  
ACCOUNTANTS,

Plaintiff,

v.

STEPHEN LAU,

Defendant.

Case No. 5:24-cv-01940-SSS-SHK

**COUNTER-DEFENDANT  
AMERICAN INSTITUTE OF  
CERTIFIED PUBLIC  
ACCOUNTANTS' ANSWER TO  
COUNTER-CLAIMANT STEPHEN  
LAU'S COUNTERCLAIMS**

1 STEPHEN LAU,  
2 Counter-Claimant,  
3 v.  
4 AMERICAN INSTITUTE OF  
5 CERTIFIED PUBLIC  
6 ACCOUNTANTS  
7 Counter-Defendant.

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1 Counterdefendant American Institute of Certified Public Accountants (the  
2 “AICPA”) hereby responds to the allegations of Counterclaimant Stephen Lau’s  
3 (“Mr. Lau”) Counterclaims [ECF Dkt. No. 28] (“Counterclaims”) as follows:

4 1. The AICPA admits that Mr. Lau is an aspiring Certified Public  
5 Accountant (“CPA”). The AICPA lacks sufficient information to admit or deny the  
6 remaining allegations of this paragraph of the Counterclaims and therefore denies  
7 them.

8 2. The AICPA lacks sufficient information to admit or deny the  
9 allegations of this paragraph of the Counterclaims and therefore denies them.

10 3. The AICPA admits only that it sued Mr. Lau for copyright  
11 infringement and trade secret misappropriation, among other claims. Except as  
12 expressly admitted, the AICPA denies any other allegations made or implied by this  
13 paragraph of the Counterclaims.

14 4. The AICPA admits only that it has observed Discord and Reddit study  
15 group discussions about AICPA-authored exam content for several years. Except as  
16 expressly admitted, the AICPA denies any other allegations made or implied by this  
17 paragraph of the Counterclaims.

18 5. The AICPA admits only that Mr. Lau is a real person. The AICPA  
19 lacks sufficient information to admit or deny the allegations of this paragraph of the  
20 Counterclaims concerning Mr. Lau’s family, and therefore denies them. The  
21 AICPA’s complaint speaks for itself with regard to its contents, and the AICPA  
22 denies any interpretation, meaning, or characterization inconsistent therewith.  
23 Except as expressly admitted, the AICPA denies any other allegations made or  
24 implied by this paragraph of the Counterclaims.

25 6. Denied.  
26  
27  
28

**The Parties**<sup>1</sup>

7. Admitted.

8. Admitted.

**Jurisdiction and Venue**

9. The allegations in this paragraph of the Counterclaims state legal conclusions to which no response is required. To the extent a response is required, the AICPA admits that this Court has federal subject matter jurisdiction over the claims in this lawsuit and denies the remaining allegations in this paragraph of the Counterclaims.

10. The allegations in this paragraph of the Counterclaims state legal conclusions to which no response is required. To the extent a response is required, the AICPA admits only that this Court is the proper venue because a substantial part of the events giving rise to the AICPA's claims occurred in this judicial district and denies the remaining allegations in this paragraph of the Counterclaims.

**Mr. Lau's Endeavor to Become a Licensed CPA**

11. The AICPA lacks sufficient information to admit or deny the allegations of this paragraph of the Counterclaims and therefore denies them.

12. Denied.

13. The AICPA lacks sufficient information to admit or deny the allegations of this paragraph of the Counterclaims and therefore denies them.

14. The AICPA lacks sufficient information to admit or deny the allegations of this paragraph of the Counterclaims and therefore denies them.

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<sup>1</sup> For ease of reference, the AICPA adopts in this Answer certain headings and certain of the capitalized terms used by Mr. Lau in his Counterclaims. The use of these headings and terms is not an admission of any of the allegations or characterizations in the Counterclaims, whether express or implied, all of which are denied except as expressly admitted.

1           15. The AICPA admits only that Mr. Lau has passed three sections of the  
2 CPA Exam. The AICPA lacks sufficient information to admit or deny the remaining  
3 allegations of this paragraph of the Counterclaims and therefore denies them.

4           16. The AICPA admits only that there have been at least 25 instances in  
5 which Mr. Lau sat for a section of the CPA Exam. The AICPA lacks sufficient  
6 information to admit or deny the remaining allegations of this paragraph of the  
7 Counterclaims and therefore denies them.

8           17. The AICPA only admits that some of the questions of exams Mr. Lau  
9 sat for in the past have since been retired. The AICPA lacks sufficient information  
10 to admit or deny the remaining allegations of this paragraph of the Counterclaims  
11 and therefore denies them.

12           18. The AICPA lacks sufficient information to admit or deny the  
13 allegations of this paragraph concerning Mr. Lau's understanding of the AICPA's  
14 allegations and therefore denies them. The AICPA denies the remaining allegations  
15 of this paragraph of the Counterclaims.

16           19. The AICPA lacks sufficient information to admit or deny the  
17 allegations of this paragraph of the Counterclaims and therefore denies them.

18  
19                           **Online Study Groups for the CPA Exam**

20           20. The AICPA lacks sufficient information to admit or deny the  
21 allegations of this paragraph of the Counterclaims and therefore denies them.

22           21. The AICPA lacks sufficient information to admit or deny the  
23 allegations of this paragraph of the Counterclaims and therefore denies them.

24           22. The AICPA lacks sufficient information to admit or deny the  
25 allegations of this paragraph of the Counterclaims and therefore denies them.

26           23. The AICPA lacks sufficient information to admit or deny the  
27 allegations of this paragraph of the Counterclaims and therefore denies them.

1           24.    The AICPA lacks sufficient information to admit or deny the  
2 allegations of this paragraph of the Counterclaims and therefore denies them.

3           25.    The AICPA lacks sufficient information to admit or deny the  
4 allegations of this paragraph of the Counterclaims and therefore denies them.

5           26.    The AICPA does not understand specifically what Lau means by his  
6 assertions in this paragraph and his use of terms, including, among others, “studying  
7 communications,” and to the extent it understands the allegations, AICPA lacks  
8 sufficient information to admit or deny the allegations, and therefore denies the  
9 allegations. The AICPA specifically denies that it has never taken effective action  
10 against violations of its NDA and intellectual property rights of which it is aware.

11           27.    The AICPA admits only that it has never previously filed a federal  
12 lawsuit regarding posts by others that may have been too specific and were flagged  
13 as problematic before being altered and/or removed. The AICPA lacks sufficient  
14 information to admit or deny the remaining allegations of this paragraph of the  
15 Counterclaims and therefore denies them.

16           28.    The AICPA lacks sufficient information to admit or deny the  
17 allegations of this paragraph of the Counterclaims and therefore denies them.

18           29.    The AICPA lacks sufficient information to admit or deny the  
19 allegations of this paragraph of the Counterclaims and therefore denies them.

20           30.    The AICPA lacks sufficient information to admit or deny the  
21 allegations of this paragraph of the Counterclaims and therefore denies them.

22           31.    The AICPA lacks sufficient information to admit or deny the  
23 allegations of this paragraph of the Counterclaims and therefore denies them.

24           32.    The AICPA admits only that in late November 2023 Mr. Lau made a  
25 post in the Reddit study group forum. This “Reddit Post” speaks for itself with  
26 regard to its contents, and the AICPA denies any interpretation, meaning, or  
27 characterization inconsistent therewith. The AICPA lacks sufficient information to  
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1 admit or deny the remaining allegations of this paragraph of the Counterclaims and  
2 therefore denies them.

3 33. The AICPA admits only that in late November 2023, Mr. Lau made a  
4 post in the Reddit study group forum. This “Reddit Post” speaks for itself with  
5 regard to its contents, and the AICPA denies any interpretation, meaning, or  
6 characterization inconsistent therewith. The AICPA lacks sufficient information to  
7 admit or deny the remaining allegations of this paragraph of the Counterclaims and  
8 therefore denies them.

9 34. The AICPA admits only that in late November 2023, Mr. Lau made a  
10 post in the Reddit study group forum. This “Reddit Post” speaks for itself with  
11 regard to its contents, and the AICPA denies any interpretation, meaning, or  
12 characterization inconsistent therewith. The AICPA lacks sufficient information to  
13 admit or deny the remaining allegations of this paragraph of the Counterclaims and  
14 therefore denies them.

15 35. The AICPA admits only that at all times relevant, it has been aware of  
16 California’s Anti-SLAPP statute. The AICPA denies the remaining allegations of  
17 this paragraph of the Counterclaims.

18 36. Denied.

19 37. Denied.

20 38. Denied.

21 39. The AICPA admits only that in early February 2024, Mr. Lau made  
22 posts in a Discord study group that are the subjects of this lawsuit. These posts  
23 speak for themselves with regard to their contents, and the AICPA denies any  
24 interpretation, meaning, or characterization inconsistent therewith.

25 40. Denied.

26 41. Denied.

1           42.    The AICPA admits only that it did not contact Mr. Lau about his  
2 Discord posts. The AICPA denies the remaining allegations of this paragraph of the  
3 Counterclaims.

4           43.    The AICPA admits only that it did not contact Mr. Lau about his  
5 Reddit posts. The AICPA denies the remaining allegations of this paragraph of the  
6 Counterclaims.

7           44.    The AICPA lacks sufficient information to admit or deny the  
8 allegations of this paragraph of the Counterclaims and therefore denies them.

9           45.    The AICPA admits only that that a DMCA take down notice it  
10 submitted was successful in having Mr. Lau's posts removed. The AICPA denies  
11 the remaining allegations of this paragraph of the Counterclaims.

12           46.    The AICPA lacks sufficient information to admit or deny the  
13 allegations of this paragraph of the Counterclaims and therefore denies them.

14           47.    The AICPA lacks sufficient information to admit or deny the  
15 allegations of this paragraph of the Counterclaims and therefore denies them.

16           48.    The AICPA denies that it did not conduct a good faith fair use analysis  
17 of Mr. Lau's posts before sending its DMCA takedown notices related to Mr. Lau's  
18 copyright-infringing post. The remaining allegations in this paragraph of the  
19 Counterclaims state a legal conclusion to which no response is required. To the  
20 extent a response is required, the AICPA denies the allegations in this paragraph of  
21 the Counterclaims.

22           49.    Denied.

23           50.    Denied.

24  
25                   **CPA Licensure and Testing in California**

26           51.    The allegations in this paragraph of the Counterclaims state a legal  
27 conclusion to which no response is required.

1           52. The CBA's mission speaks for itself with regard to its contents, and the  
2 AICPA denies any interpretation, meaning, or characterization inconsistent  
3 therewith. The AICPA lacks sufficient information to admit or deny the allegations  
4 of this paragraph of the Counterclaims and therefore denies them.

5           53. The CBA's website speaks for itself with regard to its contents, and the  
6 AICPA denies any interpretation, meaning, or characterization inconsistent  
7 therewith. The AICPA denies the remaining allegations of this paragraph of the  
8 Counterclaims.

9           54. The CBA's website and infographic speak for themselves with regard  
10 to their contents, and the AICPA denies any interpretation, meaning, or  
11 characterization inconsistent therewith. The AICPA denies the remaining allegations  
12 of this paragraph of the Counterclaims.

13           55. The AICPA admits only that the National Association of State Boards  
14 of Accountancy is referred to as "NASBA." The CBA's infographic and NASBA's  
15 websites speak for themselves with regard to their contents, and the AICPA denies  
16 any interpretation, meaning, or characterization inconsistent therewith. The AICPA  
17 denies the remaining allegations of this paragraph of the Counterclaims.

18           56. The alleged screenshot of NASBA's payment portal for California  
19 speaks for itself with regard to its contents, and the AICPA denies any  
20 interpretation, meaning, or characterization inconsistent therewith.

21           57. The NASBA payment portal speaks for itself with regard to its  
22 contents, and the AICPA denies any interpretation, meaning, or characterization  
23 inconsistent therewith. The AICPA denies the remaining allegations of this  
24 paragraph of the Counterclaims.

25           58. The allegations in this paragraph of the Counterclaims state a legal  
26 conclusion to which no response is required. To the extent a response is required,  
27 the AICPA denies the allegations in this paragraph of the Counterclaims.  
28

1           59. The NASBA ToS speaks for itself with regard to its contents, and the  
2 AICPA denies any interpretation, meaning, or characterization inconsistent  
3 therewith. The AICPA denies the remaining allegations of this paragraph of the  
4 Counterclaims.

5           60. The NASBA ToS speaks for itself with regard to its contents, and the  
6 AICPA denies any interpretation, meaning, or characterization inconsistent  
7 therewith. The AICPA denies the remaining allegations of this paragraph of the  
8 Counterclaims.

9           61. The NASBA ToS speaks for itself with regard to its contents, and the  
10 AICPA denies any interpretation, meaning, or characterization inconsistent  
11 therewith. The AICPA denies the remaining allegations of this paragraph of the  
12 Counterclaims.

13           62. The NASBA ToS speaks for itself with regard to its contents, and the  
14 AICPA denies any interpretation, meaning, or characterization inconsistent  
15 therewith. The AICPA denies the remaining allegations of this paragraph of the  
16 Counterclaims.

17           63. The NASBA ToS and the NASBA Payment portal speak for  
18 themselves with regard to their contents, and the AICPA denies any interpretation,  
19 meaning, or characterization inconsistent therewith.

20           64. The AICPA lacks sufficient information to admit or deny the  
21 allegations of this paragraph of the Counterclaims and therefore denies them.

22           65. The NASBA website speaks for itself with regard to its contents, and  
23 the AICPA denies any interpretation, meaning, or characterization inconsistent  
24 therewith. The AICPA lacks sufficient information to admit or deny the remaining  
25 allegations of this paragraph of the Counterclaims and therefore denies them.

26           66. The Prometric website speaks for itself with regard to its contents, and  
27 the AICPA denies any interpretation, meaning, or characterization inconsistent  
28

1 therewith. The AICPA denies the remaining allegations of this paragraph of the  
2 Counterclaims.

3 67. Denied.

4 68. The AICPA lacks sufficient information to admit or deny the  
5 allegations of this paragraph of the Counterclaims and therefore denies them.

6 69. Denied.

7 70. Denied.

8 71. Denied.

9 72. Denied.

10 73. The Prometric scheduling website speaks for itself with regard to its  
11 contents, and the AICPA denies any interpretation, meaning, or characterization  
12 inconsistent therewith.

13 74. The webpage available at the URL: “[https://www.aicpa-](https://www.aicpa-cima.com/news/download/uniform-cpa-examination-conduct-and-non-disclosure-agreement)  
14 [cima.com/news/download/uniform-cpa-examination-conduct-and-non-disclosure-](https://www.aicpa-cima.com/news/download/uniform-cpa-examination-conduct-and-non-disclosure-agreement)  
15 [agreement](https://www.aicpa-cima.com/news/download/uniform-cpa-examination-conduct-and-non-disclosure-agreement)” speaks for itself with regard to its contents, and the AICPA denies any  
16 interpretation, meaning, or characterization inconsistent therewith.

17 75. The PDF document that is downloadable from “[https://www.aicpa-](https://www.aicpa-cima.com/news/download/uniform-cpa-examination-conductand-non-disclosure-agreement)  
18 [cima.com/news/download/uniform-cpa-examination-conductand-non-disclosure-](https://www.aicpa-cima.com/news/download/uniform-cpa-examination-conductand-non-disclosure-agreement)  
19 [agreement](https://www.aicpa-cima.com/news/download/uniform-cpa-examination-conductand-non-disclosure-agreement)” (AICPA Downloadable NDA) speaks for itself with regard to its  
20 contents, and the AICPA denies any interpretation, meaning, or characterization  
21 inconsistent therewith. The AICPA admits that a user does not have to download the  
22 PDF to complete the scheduling process. The remaining allegations of this  
23 paragraph of the Counterclaims are denied.

24 76. The webpage available at the URL: “[https://www.aicpa-](https://www.aicpa-cima.com/news/download/uniform-cpa-examination-conduct-and-non-disclosure-agreement)  
25 [cima.com/news/download/uniform-cpa-examination-conduct-and-non-disclosure-](https://www.aicpa-cima.com/news/download/uniform-cpa-examination-conduct-and-non-disclosure-agreement)  
26 [agreement](https://www.aicpa-cima.com/news/download/uniform-cpa-examination-conduct-and-non-disclosure-agreement)” speaks for itself with regard to its contents, and the AICPA denies any  
27 interpretation, meaning, or characterization inconsistent therewith.

1           77. The AICPA ToS speaks for itself with regard to its contents, and the  
2 AICPA denies any interpretation, meaning, or characterization inconsistent  
3 therewith. The AICPA denies the remaining allegations of this paragraph of the  
4 Counterclaims.

5           78. The AICPA ToS speaks for itself with regard to its contents, and the  
6 AICPA denies any interpretation, meaning, or characterization inconsistent  
7 therewith.

8           79. Section 2.2 of the AICPA ToS speaks for itself with regard to its  
9 contents, and the AICPA denies any interpretation, meaning, or characterization  
10 inconsistent therewith.

11           80. Section 2.7 of the AICPA ToS speaks for itself with regard to its  
12 contents, and the AICPA denies any interpretation, meaning, or characterization  
13 inconsistent therewith.

14           81. Section 6.1 of the AICPA ToS speaks for itself with regard to its  
15 contents, and the AICPA denies any interpretation, meaning, or characterization  
16 inconsistent therewith. The AICPA denies the remaining allegations of this  
17 paragraph of the Counterclaims.

18           82. Section 6.2 of the AICPA ToS speaks for itself with regard to its  
19 contents, and the AICPA denies any interpretation, meaning, or characterization  
20 inconsistent therewith. The AICPA denies the remaining allegations of this  
21 paragraph of the Counterclaims.

22           83. Section 8.2 of the AICPA ToS speaks for itself with regard to its  
23 contents, and the AICPA denies any interpretation, meaning, or characterization  
24 inconsistent therewith.

25           84. Section 8.5 of the AICPA ToS speaks for itself with regard to its  
26 contents, and the AICPA denies any interpretation, meaning, or characterization  
27 inconsistent therewith.

28

1           85. Section 9.1 of the AICPA ToS speaks for itself with regard to its  
2 contents, and the AICPA denies any interpretation, meaning, or characterization  
3 inconsistent therewith.

4           86. Section 9.2 of the AICPA ToS speaks for itself with regard to its  
5 contents, and the AICPA denies any interpretation, meaning, or characterization  
6 inconsistent therewith.

7           87. Section 9.4 of the AICPA ToS speaks for itself with regard to its  
8 contents, and the AICPA denies any interpretation, meaning, or characterization  
9 inconsistent therewith.

10          88. Section 10.3 of the AICPA ToS speaks for itself with regard to its  
11 contents, and the AICPA denies any interpretation, meaning, or characterization  
12 inconsistent therewith.

13          89. The AICPA admits only that the Prometric scheduling flow does not  
14 require a candidate to actually visit any AICPA URL in order to complete  
15 scheduling and that users are directed to the Prometric URL  
16 <https://proscheduler.prometric.com/home>, which provides access to Prometric's  
17 "Pro Scheduler" tool. The user interface for the Pro Scheduler tools speaks for itself  
18 with regard to its contents, and the AICPA denies any interpretation, meaning, or  
19 characterization inconsistent therewith. The AICPA denies the remaining allegations  
20 of this paragraph of the Counterclaims.

21          90. The Pro Scheduler tool URL speaks for itself with regard to its  
22 contents, and the AICPA denies any interpretation, meaning, or characterization  
23 inconsistent therewith.

24          91. The AICPA lacks sufficient information to admit or deny the  
25 allegations of this paragraph of the Counterclaims concerning Mr. Lau's recollection  
26 and therefore denies them. The AICPA denies that Mr. Lau was not required to  
27 affirmatively assent to the terms of The Uniform CPA Examination Conduct and  
28

1 Non-Disclosure Agreement as part of scheduling the CPA Exam sections he took on  
2 November 25, 2023 and February 3, 2024.

3 92. The AICPA lacks sufficient information to admit or deny the  
4 allegations of this paragraph of the Counterclaims and therefore denies them.

5 93. The AICPA lacks sufficient information to admit or deny the  
6 allegations of this paragraph of the Counterclaims concerning Mr. Lau's  
7 recollection, and therefore denies them. The AICPA denies that the terms of the  
8 Uniform CPA Examination Conduct and Non-Disclosure Agreement that Mr. Lau  
9 assented to when scheduling "his relevant examinations" are different from the  
10 AICPA's downloadable NDA agreement and also from the document attached to the  
11 AICPA's Complaint. The AICPA admits only that, as of the date of the filing of Mr.  
12 Lau's Counterclaims, The Uniform CPA Examination Conduct and Non-Disclosure  
13 Agreement presented during the Prometric scheduling flow contained the statement  
14 that: "The Uniform CPA Exam contains trade secrets or otherwise confidential  
15 information owned by the AICPA. Access to and use of this information is strictly  
16 limited and controlled by the AICPA. The content and nature of the Uniform CPA  
17 Exam may not be captured digitally, copied, including by memorization, distributed,  
18 or otherwise disclosed, and may not be used in any way not expressly authorized by  
19 the AICPA" and referred to "NASBA's CPA Exam Candidate Guide" in place of  
20 "the Candidate Bulletin," which is the former name of what is now called  
21 "NASBA's CPA Exam Candidate Guide." The AICPA denies the remaining  
22 allegations of the paragraph of the Counterclaims.

23 94. The AICPA lacks sufficient information to admit or deny the  
24 allegations of this paragraph of the Counterclaims, and therefore denies them.

25 95. The AICPA lacks sufficient information to admit or deny the  
26 allegations of this paragraph of the Counterclaims, and therefore denies them.

1 96. The allegations in this paragraph of the Counterclaims state a legal  
2 conclusion to which no response is required. To the extent a response is required,  
3 the AICPA denies the allegations in this paragraph of the Counterclaims.

4 97. The allegations in this paragraph of the Counterclaims state a legal  
5 conclusion to which no response is required. To the extent a response is required,  
6 the AICPA denies the allegations in this paragraph of the Counterclaims.

7 98. The allegations in this paragraph of the Counterclaims state a legal  
8 conclusion to which no response is required. To the extent a response is required,  
9 the AICPA denies the allegations in this paragraph of the Counterclaims.

10  
11 **AICPA's [alleged] Sham Federal Claims**

12 99. Denied.

13 100. Denied.

14 101. Denied.

15 102. The AICPA's complaint speaks for itself with regard to its contents,  
16 and the AICPA denies any interpretation, meaning, or characterization inconsistent  
17 therewith. Except as expressly admitted, the AICPA denies any other allegations  
18 made or implied by this paragraph of the Counterclaims.

19 103. Denied.

20 104. Denied.

21 105. Denied.

22 106. Denied.

23 107. Denied.

24  
25 **FIRST CLAIM FOR RELIEF**

26 **(Declaratory Judgement of Non-Infringement of Copyright**

27 108. The AICPA incorporates by reference its responses to Paragraphs 1-  
28 107, set forth above, as if fully stated herein.

1 109. Admitted.

2 110. Admitted.

3 111. Denied.

4 112. Denied.

5 113. Denied.

6 114. Denied.

7 115. Denied.

8 116. Denied.

9 117. Denied.

10 118. Denied.

11 119. Denied.

12 **[Allegations that] No Substantial Similarity if Factually or Legally Possible**

13 120. Denied.

14 121. Denied.

15 122. Denied.

16 123. The AICPA lacks sufficient information to admit or deny the  
17 allegations of this paragraph of the Counterclaims concerning Mr. Lau's  
18 understanding, and therefore denies them.

19 124. Denied.

20 125. Denied.

21 126. The allegations in this paragraph of the Counterclaims state a legal  
22 conclusion to which no response is required. To the extent a response is required,  
23 the AICPA denies the allegations in this paragraph of the Counterclaims.

24 127. Denied.

25 128. The AICPA's complaint speaks for itself with regard to its contents,  
26 and the AICPA denies any interpretation, meaning, or characterization inconsistent  
27 therewith. Except as expressly admitted, the AICPA denies any other allegations  
28 made or implied by this paragraph of the Counterclaims.

1 129. The allegations in this paragraph of the Counterclaims state a legal  
2 conclusion to which no response is required. To the extent a response is required,  
3 the AICPA denies the allegations in this paragraph of the Counterclaims.

4 130. Denied.

5 131. Denied,

6 132. The allegations in this paragraph of the Counterclaims state a legal  
7 conclusion to which no response is required. To the extent a response is required,  
8 the AICPA denies the allegations in this paragraph of the Counterclaims.

9 133. Denied.

10 134. The allegations in this paragraph of the Counterclaims state a legal  
11 conclusion to which no response is required. To the extent a response is required,  
12 the AICPA denies the allegations in this paragraph of the Counterclaims.

13 135. Denied.

14 136. Denied.

15 **[Allegations of] Sham Pleading Tactics**

16 137. Denied.

17 138. Denied.

18 139. The AICPA's asserted registration speaks for itself with regard to its  
19 contents, and the AICPA denies any interpretation, meaning, or characterization  
20 inconsistent therewith. Except as expressly admitted, the AICPA denies any other  
21 allegations made or implied by this paragraph of the Counterclaims.

22 140. The AICPA admits only that the Exam Content the Complaint alleges  
23 Mr. Lau infringed and misappropriated came from a February 2024 ISC exam  
24 section and a November 2023 REG exam section. The AICPA lacks sufficient  
25 information to admit or deny the allegations of this paragraph of the Counterclaims  
26 concerning what Mr. Lau knows, thinks he knows, believes, or thinks he will show  
27 and therefore denies them. The AICPA denies the remaining allegations of this  
28 paragraph of the Counterclaims.

1 141. The AICPA's complaint speaks for itself with regard to its contents,  
2 and the AICPA denies any interpretation, meaning, or characterization inconsistent  
3 therewith. Except as expressly admitted, the AICPA denies any other allegations  
4 made or implied by this paragraph of the Counterclaims.

5 142. The AICPA's complaint speaks for itself with regard to its contents,  
6 and the AICPA denies any interpretation, meaning, or characterization inconsistent  
7 therewith. Except as expressly admitted, the AICPA denies any other allegations  
8 made or implied by this paragraph of the Counterclaims.

9 143. Denied.

10 144. Denied.

11 145. Denied.

12 146. The allegations in this paragraph of the Counterclaims state legal  
13 conclusions to which no response is required. To the extent a response is required,  
14 the AICPA denies the allegations in this paragraph of the Counterclaims.

15 147. The AICPA denies that it lacks standing to bring its claims. The  
16 remaining allegations in this paragraph of the Counterclaims state legal conclusions  
17 to which no response is required. To the extent a response is required, the AICPA  
18 denies the allegations in this paragraph of the Counterclaims.

19 148. The allegations in this paragraph of the Counterclaims state legal  
20 conclusions to which no response is required. To the extent a response is required,  
21 the AICPA denies the allegations in this paragraph of the Counterclaims.

22 149. The allegations in this paragraph of the Counterclaims state legal  
23 conclusions to which no response is required. To the extent a response is required,  
24 the AICPA denies the allegations in this paragraph of the Counterclaims.

25 **[Allegations of] Failure to Conduct Fair Use Analysis**

26 150. The AICPA denies that Mr. Lau's infringement is protected by the  
27 doctrine of fair use. The remaining allegations in this paragraph of the  
28 Counterclaims state legal conclusions to which no response is required. To the

1 extent a response is required, the AICPA denies the allegations in this paragraph of  
2 the Counterclaims.

3 151. Denied.

4 152. The AICPA denies that the purpose and character of Mr. Lau's  
5 infringing posts were academic, critical, scholarly, or generally for purposes of  
6 study. The remaining allegations in this paragraph of the Counterclaims state legal  
7 conclusions to which no response is required. To the extent a response is required,  
8 the AICPA denies the allegations in this paragraph of the Counterclaims.

9 153. Denied.

10 154. Denied.

11 155. Denied.

12 156. Denied.

13 157. Denied.

14 158. The allegations in this paragraph of the Counterclaims state legal  
15 conclusions to which no response is required. To the extent a response is required,  
16 the AICPA denies the allegations in this paragraph of the Counterclaims.

17 159. The allegations in this paragraph of the Counterclaims state legal  
18 conclusions to which no response is required. To the extent a response is required,  
19 the AICPA denies the allegations in this paragraph of the Counterclaims.

20 160. Denied.

21 161. Denied.

22 162. Denied.

## 23 24 **SECOND CLAIM FOR RELIEF**

### 25 **(Declaratory Judgement of No Trade Secret Misappropriation)**

26 163. The AICPA incorporates by reference its responses to Paragraphs 1-  
27 162, set forth above, as if fully stated herein.

28 164. Admitted.

1 165. Admitted.

2 166. Denied.

3 167. Denied.

4 168. Denied.

5 169. Denied.

6 170. Denied.

7 171. Denied.

8 **[Allegations of] Sham Pleading Tactics**

9 172. Denied.

10 173. Denied.

11 174. The AICPA's complaint speaks for itself with regard to its contents,  
12 and the AICPA denies any interpretation, meaning, or characterization inconsistent  
13 therewith. Except as expressly admitted, the AICPA denies any other allegations  
14 made or implied by this paragraph of the Counterclaims.

15 175. Denied.

16 176. The AICPA's complaint speaks for itself with regard to its contents,  
17 and the AICPA denies any interpretation, meaning, or characterization inconsistent  
18 therewith. Except as expressly admitted, the AICPA denies any other allegations  
19 made or implied by this paragraph of the Counterclaims.

20 177. Denied.

21 178. Denied on information and belief.

22 **[Allegations of] No Secrecy**

23 179. Denied.

24 180. The AICPA lacks sufficient information to admit or deny the  
25 allegations of this paragraph of the Counterclaims and therefore denies them.

26 181. The AICPA lacks sufficient information to admit or deny the  
27 allegations of this paragraph of the Counterclaims and therefore denies them.

28

1 182. The AICPA lacks sufficient information to admit or deny the  
2 allegations of this paragraph of the Counterclaims and therefore denies them.

3 183. The AICPA lacks sufficient information to admit or deny the  
4 allegations of this paragraph of the Counterclaims and therefore denies them.

5 184. The AICPA lacks sufficient information to admit or deny the  
6 allegations of this paragraph of the Counterclaims and therefore denies them.

7 185. The AICPA lacks sufficient information to admit or deny the  
8 allegations of this paragraph of the Counterclaims and therefore denies them.

9 186. The AICPA lacks sufficient information to admit or deny the  
10 allegations of this paragraph of the Counterclaims and therefore denies them.

11 187. Denied.

12 188. Denied.

13 189. Denied.

14 190. The referenced BEC Exam Blueprint speaks for itself with regard to its  
15 contents, and the AICPA denies any interpretation, meaning, or characterization  
16 inconsistent therewith. Except as expressly admitted, the AICPA denies any other  
17 allegations made or implied by this paragraph of the Counterclaims.

18 191. The referenced BEC Exam Blueprint speaks for itself with regard to its  
19 contents, and the AICPA denies any interpretation, meaning, or characterization  
20 inconsistent therewith. Except as expressly admitted, the AICPA denies any other  
21 allegations made or implied by this paragraph of the Counterclaims.

22 192. The referenced Exam Blueprint speaks for itself with regard to its  
23 contents, and the AICPA denies any interpretation, meaning, or characterization  
24 inconsistent therewith. Except as expressly admitted, the AICPA denies any other  
25 allegations made or implied by this paragraph of the Counterclaims.

26 193. The referenced Exam Blueprint speaks for itself with regard to its  
27 contents, and the AICPA denies any interpretation, meaning, or characterization  
28

1 inconsistent therewith. Except as expressly admitted, the AICPA denies any other  
2 allegations made or implied by this paragraph of the Counterclaims.

3 194. The referenced Exam Blueprint speaks for itself with regard to its  
4 contents, and the AICPA denies any interpretation, meaning, or characterization  
5 inconsistent therewith. Except as expressly admitted, the AICPA denies any other  
6 allegations made or implied by this paragraph of the Counterclaims.

7 195. The referenced BEC Exam Blueprint speaks for itself with regard to its  
8 contents, and the AICPA denies any interpretation, meaning, or characterization  
9 inconsistent therewith. Except as expressly admitted, the AICPA denies any other  
10 allegations made or implied by this paragraph of the Counterclaims.

11 196. Admitted.

12 197. Denied.

13 198. Admitted.

14 199. Admitted.

15 200. Admitted.

16 201. Admitted.

17 202. Admitted.

18 203. Admitted.

19 204. Admitted.

20 205. Admitted.

21 206. Admitted.

22 207. The AICPA lacks sufficient information to admit or deny the  
23 allegations of this paragraph of the Counterclaims concerning what Mr. Lau believes  
24 and therefore denies them. The AICPA denies the remaining allegations of this  
25 paragraph of the Counterclaims.

26 208. The AICPA lacks sufficient information to admit or deny the  
27 allegations of this paragraph of the Counterclaims concerning what Mr. Lau believes  
28

1 and therefore denies them. The AICPA denies the remaining allegations of this  
2 paragraph of the Counterclaims.

3 209. Denied.

4 **[Allegations of] No Value Because of Secrecy**

5 210. Denied.

6 211. The AICPA admits that it licenses and monetizes retired exam content  
7 to assist in Exam preparation.

8 212. Denied.

9 213. Denied.

10 214. The referenced info graphic speaks for itself with regard to its contents,  
11 and the AICPA denies any interpretation, meaning, or characterization inconsistent  
12 therewith. Except as expressly admitted, the AICPA denies any other allegations  
13 made or implied by this paragraph of the Counterclaims.

14 215. Denied.

15 216. Denied.

16 217. The AICPA's complaint speaks for itself with regard to its contents,  
17 and the AICPA denies any interpretation, meaning, or characterization inconsistent  
18 therewith. Except as expressly admitted, the AICPA denies any other allegations  
19 made or implied by this paragraph of the Counterclaims.

20 218. The AICPA admits only that there have been at least 25 instances in  
21 which Mr. Lau sat for a section of the CPA Exam. The AICPA lacks sufficient  
22 information to admit or deny the remaining allegations of this paragraph of the  
23 Counterclaims and therefore denies them.

24 219. The AICPA lacks sufficient information to admit or deny the  
25 allegations of this paragraph of the Counterclaims and therefore denies them.

26 220. The AICPA lacks sufficient information to admit or deny the  
27 allegations of this paragraph of the Counterclaims and therefore denies them. The  
28 AICPA denies the remaining allegations of this paragraph of the Counterclaims.

1 221. Denied.

2 222. Denied.

3 **[Allegations of] No Value Because of Secrecy**

4 223. The AICPA admits only that Mr. Lau acquired the AICPA's Trade  
5 Secrets subject to The Uniform CPA Examination Conduct and Non-Disclosure  
6 Agreement. The AICPA denies the remaining allegations of this paragraph of the  
7 Counterclaims.

8 224. Denied.

9 225. The AICPA lacks sufficient information to admit or deny the  
10 allegations of this paragraph of the Counterclaims concerning what Mr. Lau believes  
11 and therefore denies them. The AICPA denies the remaining allegations of this  
12 paragraph of the Counterclaims.

13

14

**THIRD CLAIM FOR RELIEF**

15

**(Declaratory Judgement of No Breach or Damages)**

16

17

226. The AICPA incorporates by reference its responses to Paragraphs 1-  
225, set forth above, as if fully stated herein.

18

227. Admitted.

19

228. Admitted.

20

229. Denied.

21

230. Denied.

22

231. Denied.

23

232. Denied.

24

233. Denied.

25

234. Denied.

26

235. Denied.

27

236. Denied.

28

1           237. The AICPA lacks sufficient information to admit or deny the  
2 allegations of this paragraph of the Counterclaims and therefore denies them.

3           238. Denied.

4           239. Denied.

5           240. Denied.

6           241. Denied

7           242. The AICPA lacks sufficient information to admit or deny the  
8 allegations of this paragraph of the Counterclaims concerning what contracts of his  
9 he interfered with, who paid money for him to take a test, and what their  
10 motivations were and therefore denies such allegations. The AICPA denies the  
11 remaining allegations of this paragraph of the Counterclaims.

12          243. Denied.

13          244. The AICPA lacks sufficient information to admit or deny the  
14 allegations of this paragraph of the Counterclaims and therefore denies them.

15          245. The AICPA lacks sufficient information to admit or deny the  
16 allegations of this paragraph of the Counterclaims and therefore denies them.

17          246. The AICPA admits that Mr. Lau sat for the FAR exam section. The  
18 AICPA lacks sufficient information to admit or deny the remaining allegations of  
19 this paragraph of the Counterclaims and therefore denies them.

20          247. Admitted.

21          248. Admitted.

22          249. The AICPA lacks sufficient information to admit or deny the  
23 allegations of this paragraph of the Counterclaims and therefore denies them.

24          250. The AICPA lacks sufficient information to admit or deny the  
25 allegations of this paragraph of the Counterclaims and therefore denies them.

26          251. The AICPA lacks sufficient information to admit or deny the  
27 allegations of this paragraph of the Counterclaims and therefore denies them.

28          252. Denied.

1 253. Denied.

2 254. Denied.

3  
4 **PRAYER FOR RELIEF**

5 The AICPA denies that Mr. Lau is entitled to any relief.

6 **AFFIRMATIVE DEFENSES**

7 As separate and distinct affirmative defenses to the Counterclaimant's  
8 allegations, the AICPA alleges as follows:

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Sham Pleading)**

11 The Counterclaims are barred in whole or in part, because they constitute a  
12 sham pleading that seeks adjudication of the same legal principles underlying the  
13 Complaint and Mr. Lau's asserted defenses. Because the Counterclaims merely re-  
14 assert issues that are already before the Court on the AICPA's Complaint, the  
15 Counterclaims are subject to dismissal because giving a defendant control over a  
16 plaintiff's suit enables the defendant to resist any attempt on the part of the plaintiff  
17 to dismiss such suit, and to compel its trial, which, in the absence of direct  
18 provisions to the contrary in the equity rules or commanding general equity  
19 principles sanctioning such procedure, amounts to a denial of due process.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **(Lack of Standing)**

22 In addition to being a sham pleading, the Counterclaims are barred, in whole  
23 or in part, because Mr. Lau's purported injury now lies entirely in the past. Under  
24 these circumstances, Mr. Lau lacks standing to seek a declaratory judgment. Mr.  
25 Lau's only purported basis for injury is the AICPA filing this lawsuit against him,  
26 which occurred prior to the filing of the Counterclaims. Thus, Mr. Lau's  
27 Counterclaims do not deter any future conduct. Consequently, Mr. Lau lacks  
28 standing under the Declaratory Judgment Act.

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(No Fair Use)**

3 The Counterclaim for Declaratory Judgment for Non-Infringement of  
4 Copyright is barred, in whole or in part, because Mr. Lau is not entitled to a finding  
5 that his conduct is a protected fair use under 17 U.S.C. § 107. The infringed work is  
6 a secure test item, an important type of copyrighted work that Congress and federal  
7 courts have recognized is both especially vulnerable to unauthorized disclosure and  
8 entitled to very strong protection, which should not be limited by fair use. Here, the  
9 unpublished, secret nature of the infringed secure test item, granted such protection  
10 in order to promote the progress of knowledge through education and testing,  
11 weighs heavily against a finding of fair use in favor of Mr. Lau who sought to  
12 destroy the value of the copyrighted work.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 **(No Copyright Misuse)**

15 The Counterclaim for Declaratory Judgment for Non-Infringement of  
16 Copyright is barred, in whole or in part, because Defendant is not entitled to a  
17 finding that the AICPA has misused its copyrights. Copyright misuse prevents  
18 copyright holders from leveraging their limited monopoly to allow them control of  
19 areas outside the monopoly. The Counterclaims do not contend that the AICPA has  
20 somehow tried to leverage its copyrights in Exam Content in areas outside that  
21 limited monopoly. Instead, the Counterclaims simply contend that the AICPA lacks  
22 a valid copyright in the Exam Content. This is not copyright misuse.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 **(No De Minimis Copying)**

25 The Counterclaim for Declaratory Judgment for Non-Infringement of  
26 Copyright is barred, in whole or in part, because Mr. Lau is not entitled to a finding  
27 that Mr. Lau's copyright infringement was *de minimis*. The AICPA claims copyright  
28 infringement based on Defendant posting an near-exact reproduction of an ISC

1 multiple choice question along with the related answer choices. Mr. Lau claims any  
2 copying was *de minimis* because it was only one question of a group of secure test  
3 items. This is incorrect. The Registered Work is a secure test item part of a group  
4 registration. Secure test items, which are “comprised of a question (or ‘stem’), the  
5 correct answer to that question, any incorrect answer choices (or ‘distractors’), and  
6 any associated material, such as a narrative passage or diagram,” are considered  
7 independent works subject to copyright protection. 37 C.F.R. § 202.13. Mr. Lau’s  
8 copying is not *de minimis* copying of a work; it is a virtually exact reproduction of  
9 an *entire* work.

#### 10 **SIXTH AFFIRMATIVE DEFENSE**

##### 11 **(Estoppel)**

12 The Counterclaims are barred, in whole or in part, because Mr. Lau, through  
13 his conduct, recognized, acknowledged, and agreed that the AICPA’s asserted  
14 copyright rights and trade secret rights in the Exam Content are valid. In doing so,  
15 Mr. Lau induced the AICPA to provide him with access to the AICPA’s protected  
16 Exam Content. Mr. Lau acknowledged that “Exam Content is the exclusive,  
17 confidential, and proprietary property of the AICPA, and is protected from  
18 unauthorized disclosure and use by the terms of [the NDAs] and by federal, state,  
19 and international intellectual property laws, including but not limited to copyright  
20 and trade secret laws.” Having done so and entering into the NDAs to obtain access  
21 to the AICPA’s Exam Content, Mr. Lau is estopped from claiming that the AICPA’s  
22 copyrights and trade secret rights in the Exam Content are not valid in response to  
23 the AICPA’s copyright infringement and trade secret misappropriate claims, and  
24 that no contract existed.

#### 25 **SEVENTH AFFIRMATIVE DEFENSE**

##### 26 **(No Damages)**

27 The Counterclaims are barred, in whole or in part, because they purport to  
28 assert that the AICPA breached some contract with Mr. Lau but do not plead the

1 AICPA has caused Defendant any damage. Damages are a required element of a  
2 claim under California law asserting a contractual breach.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 **(Good Faith)**

5 The Counterclaims are barred, in whole or in part, because the AICPA did not  
6 engage in bad faith, willful, wanton, or reckless conduct toward Mr. Lau. All the  
7 AICPA's actions were taken without malice, ill will, or any conscious disregard for  
8 the interests of Mr. Lau. The AICPA is responsible for maintaining the integrity and  
9 security of the CPA Exam and protect its intellectual property rights in Exam  
10 Content. Mr. Lau is not entitled to any declaratory judgment that the AICPA raised  
11 frivolous claims against him.

12 **NINTH AFFIRMATIVE DEFENSE**

13 **(Unclean Hands)**

14 The Counterclaims are barred, in whole or in part, because Mr. Lau's conduct  
15 renders a judgment in his favor inequitable. Despite agreeing in the NDAs that he  
16 would not reproduce Exam Content, that he would not publish, distribute, or  
17 transmit it including on the Internet, and that he would not communicate about  
18 Exam Content, Mr. Lau did so. Indeed, Mr. posted a virtually exact reproduction of  
19 both the content of an ISC multiple choice question along with the related answer  
20 choices. It would be inequitable to enter judgment in Mr. Lau's favor in light of this  
21 wrongful conduct.

22 **TENTH AFFIRMATIVE DEFENSE**

23 **(Bad Faith)**

24 The Counterclaims are barred, in whole or in part, because each counterclaim  
25 for relief has always been and continues to be frivolous, unreasonable, and  
26 groundless.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Equities in Favor of Defendants)**

The Counterclaims are barred, in whole or in part because the equities weigh in favor of the AICPA and against Mr. Lau. The AICPA seeks to maintain the Uniform CPA Exam's equal playing field and Mr. Lau seeks to use his claims to avoid responsibility for violating his obligations to the AICPA and, in doing so, compromising the security and integrity of the Uniform CPA Exam.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate Damages and Attorneys' Fees)**

Mr. Lau is not entitled to any damages or attorneys' fees. The Counterclaims fail to plead any damages caused by the AICPA. Mr. Lau failed to mitigate any attorneys' fees incurred, especially due to his excessive and improper pleading in response to the Complaint.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Speculative Damages)**

The Counterclaims are barred, in whole or in part, because any damage to Mr. Lau referenced in the Counterclaims is speculative and is not part of his legal claims.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Superseding and Intervening Acts)**

The Counterclaims are barred, in whole or in part, because any damage caused to Mr. Lau was caused by his own conduct in violating the AICPA's copyright, trade secret, and contract rights in the Exam Content and for breaching his NDA with the AICPA.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Uncertainty)**

The Counterclaims fail plead the purported facts, if any with sufficient specificity for the AICPA to validly respond. The Counterclaims instead largely

1 consist of Mr. Lau's speculations and legal positions. These allegations are so  
2 vague, ambiguous, and uncertain that it is impossible to ascertain all the material  
3 aspects of the purported Counterclaims for relief against the AICPA.

4 **SIXTEENTH AFFIRMATIVE DEFENSE**

5 **(Failure to State a Claim)**

6 Mr. Lau's purported Counterclaims fail to state a counterclaim upon which  
7 relief can be granted.

8 **RESERVATION OF AFFIRMATIVE DEFENSES**

9 The AICPA reserves all affirmative defenses under rule 8(c) of the Federal  
10 Rules of Civil Procedure and any other defenses, at law or in equity, that may be  
11 available now or that may become available in the future, based on discovery or  
12 other factual investigation of this case.

13  
14 Dated: January 6, 2025

15 SHEPPARD, MULLIN, RICHTER &  
16 HAMPTON LLP

17  
18 By

/s/ Tenaya Rodewald

TENAYA RODEWALD

KAZIM A. NAQVI

Attorneys for Plaintiff

AMERICAN INSTITUTE OF CERTIFIED  
PUBLIC ACCOUNTANTS